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TORERE MACADAMIAS LTD – Terms and Conditions of Trade 2023

1. DEFINITIONS

- 1.1 "TML" shall mean Torere Macadamias Ltd and its successors and assigns.
- 1.2 "Customer" shall mean the Customer and any person acting on behalf of and with the authority of the Customer.
- 1.3 "Guarantor" means that person (or persons), or entity that agrees herein to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Goods" are as defined in the Contract and Commercial Law Act 2017 Part 3, Subparts 1-6 and are the Goods supplied by TML to the Customer (and where the context so permits the Terms 'Goods' and 'Services' are interchangeable.)
- 1.5 "Services" shall mean all services supplied by TML to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
- 1.6 "Price" shall mean the cost of the Goods as agreed between TML and Customer subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 (a) Any instructions received by TML from the Customer for the supply of Goods shall constitute acceptance of the Terms and Conditions contained herein.
- (b) Where such acceptance by the Customer is acknowledged by means of electronic transmission the provisions of the Contract and Commercial Law Act 2017 Part 4, Subpart 1, will apply.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these Terms and Conditions by the Customer the Terms and Conditions are irrevocable and can only be rescinded in accordance with these Terms and Conditions or with the written consent of the manager of TML.
- 2.4 None of TMLs agents or representatives are authorised to make any representations, statements, conditions, or agreements not expressed by the manager of TML in writing nor is TML bound by any such unauthorised statements.
- 2.5 The Customer undertakes to give TML not less than (7) days prior written notice of any proposed change in the Customers name and or any change in the Customers details (including but not limited to changes in the Customers address, facsimile phone number or business practice) and change of ownership.

3. GOODS / SERVICE

- 3.1 The Goods and or Services are as described on the invoices, quotation, estimate, work authorisation or any other work commencement forms as provided by TML to the Customer.

4. PRICE and PAYMENT

- 4.1 At TMLs sole discretion the Price shall be either:
 - (a) The Price shall be as indicated on invoices provided by TML to the Customer in respect of Goods supplied; or
 - (b) The Price shall be TMLs current price at the date of delivery of the Goods according to TMLs current Price list; or
 - (c) The Price of the Goods shall, subject to clause 4.2, be TMLs quote/estimate Price, which shall be binding upon TML provided that the Customer shall accept in writing TMLs quotation within 30 days.
- 4.2 At TMLs sole discretion a deposit may be required. The deposit amount or percentage of the price will be stipulated at the time of order of the Goods/Services and shall become immediately due and payable and is non-refundable.
- 4.3 Time for payment for the Goods/Services shall be of the essence and will be stated on the invoice, quotation, or any other forms. If no date is stated, then payment shall be on delivery of the Goods/Services.
- 4.4 At TMLs sole discretion, payment for approved Customers shall be made by instalments in accordance with TMLs delivery/payment schedule.
- 4.5 At TMLs sole discretion, payment for approved Customers shall be due on 20th of each month following the date of an invoice/ statement emailed or posted to the Customers address or addresses for notices.
- 4.6 Payment will be made by online payment, direct credit, or any other method as agreed to between TML and the Customer.
- 4.7 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable except to the extent that such taxes are expressly included in any quotation/estimate given by TML.

5. DELIVERY OF GOODS

- 5.1 Delivery of the Goods shall be made to the Customers address. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Customer at TMLs address.
- 5.2 Delivery of the Goods to a carrier, either named by the Customer or failing such naming to a carrier at the discretion of TML for the purpose of transmission to the Customer, is deemed to be a delivery of the Goods to the Customer.
- 5.3 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purpose of this agreement.
- 5.4 The failure of TML to deliver shall not entitle either party to treat this contract as repudiated.
- 5.5 TML shall not be liable for any loss or damage whatsoever due to failure by TML to deliver the Goods (or any of them) promptly or at all.
- 5.6 TML may deliver the Goods by separate instalments (in accordance with an agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract.
- 5.7 All transportation cost and insurance of the Goods provided by TML to the Customer shall be the Customer's responsibility.

6. RISK

- 6.1 If TML retains property in the Goods nonetheless all risk for the Goods passes to the Customer on delivery.
- 6.2 If any of the Goods are damaged or destroyed prior to the property in them passing to the Customer, TML is entitled, without prejudice to any of its other rights to remedies under these Terms and Conditions (including the right to receive payment of the balance of the Price of the Goods) to receive all insurance proceeds payable in respect of the Goods. This applies whether or not the Price has become payable under these Terms and Conditions. The production of these Terms and Conditions by TML is sufficient evidence of TMLs rights to receive the insurance proceeds without the need for any person dealing with TML to make further enquiries.

7. DEFECTS / RETURNS

- 7.1 The Customer shall inspect the Goods and shall within seven (7) days of delivery notify TML of any alleged defects, shortage in quantity, damage, or failure to comply with the description or quote. The Customer shall afford TML the opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall conclusively be presumed to be in accordance with the Terms and Conditions and free from any defect or damage.
- 7.2 For defective Goods which TML has agreed in writing that the Customer is entitled to reject, TMLs liability is limited to either (at TMLs sole discretion) replacing the Goods or repairing the Goods provided that:
 - (a) The Customer has complied with provisions of Clause 7.1
 - (b) TML will not be liable for Goods which have not been stored or used in a proper manner.
 - (c) The Goods are returned in the condition in which they were delivered and with all packaging material as is reasonable and possible in the circumstances.
- 7.3 TML may at its sole discretion, accept Goods for Credit but this may incur a re-stocking fee of 10% plus any freight costs.

8. COMMERCIAL CUSTOMERS MACADAMIA STOCK PURCHASES

- 8.1 a) It is the Customers responsibility to inspect the goods/stock prior to purchase;
- b) The customer acknowledges that they rely solely on their own skill and judgement in selecting and purchasing the stock and that TML has no liability for any future loss or damages howsoever caused arising from the purchase;
- c) It is the Customers responsibility (if applicable) to attend any pre-purchase instructional training scheduled by TML for the purposes of selection and instruction as to future care of the stock;
- d) under no circumstances will stock be offered for sale unless such inspection as detailed in Clause 8:1(c) is undertaken.

9. DEFAULT & CONSEQUENCES OF DEFAULT

- 9.1 Interest on over-due invoices shall accrue from the date when payment becomes due and daily until the date of payment at the rate of 2.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.
- 9.2 If the Customer defaults on payment of any invoice when due, the Customer shall indemnify TML from and against all of TMLs costs and disbursements including on a solicitor and own Customer basis and in addition all of TMLs nominees cost of collection.
- 9.3 Without prejudice to any other remedies TML may have, if at any time the Customer is in breach of any obligations (including those relating to payment) TML may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the Terms and Conditions. TML will not be liable to the Customer for any loss or damage the Customer suffers because TML exercised its rights under this clause.
- 9.4 If any account remains unpaid at the end of the second month after supply of the Goods or Services the following will apply: An immediate amount shall be levied for administration fees which sum shall become immediately due and payable in addition to interest payable under clause 9.1 here-of.

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9.5 In the event that:

- (a) any money payable to TML becomes overdue or in TMLs opinion the Customer will be unable to meet its payments as they fall due, or,
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors or makes an assignment for the benefit of its creditors, or,
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer then without prejudice to TMLs other remedies at Law.
- (d) TML shall be entitled to cancel all or and part of the order of the Customer which remains unperformed in addition to and without prejudice to and other remedies; and
- (e) all amounts owing to TML shall, whether or not due for payment, immediately become due and payable.

10. TITLE

- 10.1 It is the intention of TML and agreed by the Customer that property in the Goods shall not pass until;
 - (a) the Customer has paid all amounts owing for the particular Goods and;
 - (b) the Customer has met all other obligations due by the Customer to TML in respect of all the contracts between TML and the Customer, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until TML has received payment and all other obligations of the Customer are met.
- 10.2 It is further agreed that:
 - (a) until such time as ownership of the Goods shall pass from TML to the Customer TML may give notice in writing to the Customer to return the Goods or any of them to TML. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease.
 - (b) if the Customer fails to return the Goods to TML then TML or TMLs agent may enter upon and into land and premises owned or occupied or used by the Customer or at any premises as the invitee of the Customer to where the Goods are situated and take possession of the Goods without being responsible for any damage caused.

11. PERSONAL PROPERTY SECURITIES ACT 1999

- 11.1 Upon assenting to these Terms and Conditions in writing the Customer acknowledges and agrees that:
 - (a) These Terms and Conditions constitute a security agreement for the purpose of the PPSA and;
 - (b) A security interest is taken in all Goods previously supplied by TML to the Customer and all Goods that will be supplied in the future by TML to the Customer during the continuance of the party's relationship.
- 11.2 The Customer undertakes to:
 - (a) Sign any further documents and/or provide any information. Such information to be complete and accurate and up to date in all respects which TML may reasonably require to register a financing statement or financing charge statement on the Personal Properties Security Register.
 - (b) Indemnify and upon demand reimburse TML for all expenses incurred in registering a financing statement or financing charge statement on the Personal Properties Security Register or releasing any Goods charged thereby;
 - (c) not registering a financing charge statement or a charge demand without the prior written consent of TML;
 - (d) give TML not less than fourteen (14) days prior written notice of any proposed change in the Customers name and/or any other changes in the Customers details (including but not limited to change to the Customers address contact numbers or business practice) and;
 - (e) the Customer will immediately give advice to TML of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 11.3 TML and the Customer agree that nothing in sections 114(1)(a) 133 and 134 of the PPSA shall apply to these Terms and Conditions.
- 11.4 The Customer waives its rights as a debtor under sections 116,120(2), 121,125,126,127,129,131 and 132 of the PPSA.
- 11.5 Unless otherwise agreed to in writing by TML the Customer waives its rights to receive a verification statement in accordance with section 148 of the PPSA.
- 11.6 The Customer unconditionally ratifies any action taken by TML under and by virtue of the power of attorney given by the Customer to TML under clauses 11.1 to 11.5.

12. SECURITY & CHARGE

- 12.1 Despite anything to the contrary contained herein or any other rights which TML may have, howsoever;
 - (a) Where the Customer and or the Guarantor (if any) is the owner of land, realty or and other asset capable of being charged, both the Customer and or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to TML or TMLs nominee to secure all amounts and other monetary obligations payable under the Terms and Conditions. The Customer and/or the Guarantor acknowledge and agree that TML (or TMLs nominee) shall be entitled to lodge where appropriate a caveat and that caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - (b) Should TML elect to proceed in any manner in accordance with this clause and or its sub-clauses the Customer and or Guarantor shall indemnify TML from and against all TMLs costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) To give effect to the provisions of clause 12, 12.1(a) to (b) inclusive hereof the Customer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint TML or TMLs nominee as the Customers and/or Guarantors true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other Terms and Conditions as TML and or TMLs nominee shall see if in his/her/its/their absolute discretion against the joint and or several interest of the Customer and/ or the Guarantors in any land realty or asset in favour of TML and in the Customers and/or the Guarantors name as may be necessary and other acts including instituting any necessary legal proceedings and further to execute all or any documents in TMLs absolute discretion which may be necessary or advantageous to give effect to the position of this clause.

13. CONSUMER GUARANTEES ACT 1993

- 13.1 This agreement is subject, in all cases except where the Customer is contracting within the Terms and Conditions of a trade/business (which cases are specifically excluded) to the provisions of the Consumer Guarantees Act 1993.

14. CANCELLATION

- 14.1 TML may cancel these Terms and Conditions or cancel delivery of the Goods and Services at any time before the Goods are delivered by giving written notice. On giving such notice TML shall promptly repay the Customer any sums paid in respect of the price for the Goods. TML shall not be liable for any loss or damage arising from such cancellation.
- 14.2 At TMLs sole discretion the Customer may cancel delivery of Goods and/or Services. In the event that the Customer cancels delivery of Goods and/or Services the Customer shall be liable for any cost incurred by TML up to the time of cancellation.

15. PRIVACY ACT 1993

- 15.1 The Customer and the Guarantors (if separate to the Customer) authorises TML to collect, retain and use any information about the Customer, for the purpose of assessing the Customers creditworthiness or marketing any Goods and services provided by TML to any other party.
- 15.2 The Customer authorises TML to disclose any information obtained to any person for the purpose set out in clause 15.1.
- 15.3 Where the Customer is a natural person the authorities under (clause 15.1 and 15.2) are authorities or consents for the purpose of the Privacy Act 1993.

16. LIMITATION OF LIABILITY

- 16.1 To the fullest extent permitted by law TML shall not be liable for loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods provided by TML to the Customer.
- 16.2 The Customer shall indemnify TML, its officers, employees, agents, or subcontractors against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of this clause whether caused or arising as a result of the negligence of TML or otherwise, brought by any persons in connection with any matter, act, or omission or error by TML, its agents or employees in connection with the Goods provided.

17. CONTRACTUAL LEGISLATION

- 17.1 The provisions within these Terms and Conditions are subject to the Contract and Commercial Law Act 2017 Part 2, Subpart 3

18. LIEN

- 18.1 Where TML has not received or been tendered the whole of the price, or the payment has been dishonoured, TML shall have;
 - (a) a lien on the Goods.
 - (b) the right to retain them for the price while TML is in possession of them.
 - (c) a right of stopping the Goods in transit whether or not delivery has been made or ownership has passed; and
 - (d) a right of resale
 - (e) the foregoing right of disposal, provided that the Lien of TML shall continue despite the commencement of proceedings or judgement for the price having been obtained.

19. GENERAL

- 19.1 All Goods and Services supplied by TML are Subject to the laws of New Zealand and that TML takes no responsibility for changes in the Law that affect the Goods and Services supplied.
- 19.2 If any provision of these Terms and Conditions shall be invalid, void, or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected or prejudiced or impaired.
- 19.3 TML shall be under no liability whatsoever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by TML of these Terms and Conditions.
- 19.4 In the event of any breach of this contract by TML the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of TML exceed the price of the Goods.
- 19.5 The Customer shall not set off against the Price amounts due from TML.
- 19.6 Neither party shall be liable for any default due to any act of God, terrorism, war, earthquake strike, lock out, industrial action, flood, storm or other event beyond the reasonable control of either party.
- 19.7 TML may license or sub-contract all or any part of its rights and obligations without the Customers consent.
- 19.8 TML shall not be liable for errors or omissions arising from oversight or a misinterpretation of the Customers verbal instruction.
- 19.9 TML reserves the right to review these Terms and Conditions at and time and from time to time. If following any such review, there is to be any change in the Terms and Conditions that change will take effect from the date on which TML notifies the Customer of such change.